marine insurance?" The Lord Justice then proceeds to combat the views on that point both of CHITTY, J., in the court below, and of the judges who decided the American cases, who had fallen into a mistake in relying upon a distinction between fire and marine insurance. "Whereas," says he "there is no real distinction except in the diversity of the subject-matter insured." He then proceeds to quote from the opinion of SHAW, C. J., in *King* v. *State Mut. Ins. Co.*, 7 Cush. (Mass.) 12, where he says, commenting on the case of *Tyler* v. *The Ætna Ins. Co.*, 16 Wend. (N. Y.) 385: "Looking at the analogies and illustrations on which the reasoning of the learned chancellor is founded, it may be a question whether he has not relied too much on the cases of marine insurance, in which the doctrines of constructive total loss, abandonment and salvage are fully acknowledged, but which have slight application to insurances against loss by fire." Admitting the but slight application," the Lord Justice says: "That is not because a contract of fire insurance is not a contract of indemnity, but because the subject-matter of the two classes of cases is different."

A reference to the Act of Parliament mentioned by JAMES, L. J., in *Rayner* v. *Preston*, was made in the note to that case in 21 Am. Law Reg. 97, where it was shown that this act had no reference to a mere executory contract between vendor and vendee, although, as having for its object the protection of all those having existing interests in or ownerships of the premises, under certain circumstances named in the act itself, it so far supports the views taken in the cases cited in the note appended to that case.

HUGH WEIGHTMAN.

New York.

RECENT AMERICAN DECISIONS.

Court of Appeals of Kentucky.

JOHNSON, ADMR., *v.* HUNT.

An agreement, for a valuable consideration, to interfere to bring about a marriage between others is void.

To make a plea of accord and satisfaction good, where the accord was to do a thing in satisfaction at a future day, it must be alleged that the services performed were *accepted* in satisfaction of the debt or claim against the defendant; to allege that the party *agreed* to accept the services in satisfaction is not sufficient.

APPEAL from the Warren Circuit Court.

Wright & McElroy, Rodes & Settle, Wilkins & Sims and *E. W. Hines*, for appellant.

Porter & Porter, for appellee.

The opinion of the court was delivered by

PRYOR, J.—The appellee, George W. Hunt, on the 1st of January in the year 1877, borrowed of his grandfather, Thomas John-

son, the sum of $5000, for which he executed his note payable in three years with eight per cent. interest from the time of its execution. The grandfather died, and his personal representatives instituted an action at law upon the note, to which the appellee pleaded in substance that decedent being a widower, and desirous of again marrying, had offered a relative the sum of $10,000 to aid him in procuring him a wife, and his relatives (except the appellee) opposing a second marriage, the grandfather, in consideration that the appellee would assist him in procuring a wife, agreed that he would, as a compensation therefor, release and give up to the appellee the note in controversy.

The name of the young lady having been suggested, the appellee alleges that he wrote letters to her for his grandfather, and did all in his power to accomplish the purpose in view. That he had not only complied with his contract, but used his influence with others to marry his aged relative. He therefore asks that the note be delivered up, &c. To this answer a demurrer was filed and sustained, and thereupon the appellee filed an amended answer, in which he alleges that his grandfather was seventy-seven years of age, feeble and unable to ride on horseback, and that in consideration that he, the appellee, would write letters to the young lady for him, and see that they were delivered, &c., that he would give him the note for $5000. That he fully complied with the agreement, by writing the letters, and delivering them to the young lady, and therefore the note was fully discharged.

The demurrer to the answer, as amended, was overruled, and the case went to the jury, upon an issue made by the administrators as to the existence of any such agreement, and a verdict returned for the defendant.

The answer is but a plea of accord and satisfaction, and to make such a plea good, it should be alleged that the services performed were accepted in satisfaction of the debt, or claim against the defendant, and to allege that the party agreed to accept them in satisfaction is bad pleading.

When the accord is to do a thing in satisfaction at a future day, and the act is done and accepted on that day, it is in law a satisfaction, and no action can be maintained on the original demand. The plea must allege that the matter was accepted in satisfaction: *Hearn* v. *Kiehl*, 38 Penn. St. 147; Chitty on Cont., p. 1123. If the intestate agreed to accept the services of the appellee in dis-

charge of the note, and failed to comply with his agreement, if the contract is otherwise unobjectionable, the remedy is by an action for the breach of the contract.

The most fatal objection to the defence is that the contract, as alleged, is void, and the proof in no manner aids the pleading or verdict rendered. It is alleged that the grandfather was advanced in years, too feeble to ride and unable to write, and that the appellee (his grandson) undertook to write his letters to the young lady and deliver them, and the young lady says those letters had reference to a matrimonial alliance with the old gentleman.

The principal witness for the appellee states that in a conversation with the old man, the latter said he had agreed to give the grandson the note, if he would assist him in marrying. That Hunt was to do his writing, &c., and was complying with his agreement.

The same statement is made by other witnesses, who speak of conversations with this old man, in which he spoke of his matrimonial prospects, and of the appellee, as the instrument through which success was to be accomplished.

He said to a lady witness *that George* was complying with his contract like a Turk. The defence made as well as the testimony in support of it, shows clearly (if any contract was made) a marriage brokerage agreement; the young man undertaking to bring about the marriage, in consideration of the surrender of the note for $5000.

The interference by one, upon an agreement to receive a monied or valuable consideration, to induce or bring about a marriage between others, has always been held void. Such contracts, if carried out, result in unhappy marital relations, and have been discountenanced by the law.

The elementary authorities, as well as the reported cases, all sustain this view of such a contract. We have seldom seen a more flimsy defence than has been made in this case. The declarations of an old, feeble and diseased man, with reference to a contemplated marriage, is made the sole foundation for defeating the recovery.

The appellee promised to pay the note time and again, after the death of his grandfather, and there can be no doubt, from the proof in the record, that the statements made by the intestate were mere expressions of an intention to give without any consideration whatever. He died in possession of the note, and it passed into the hands of the administrators.

The court below should have sustained the demurrer to the answer as amended, and failing to do that, should have instructed the jury to find for the plaintiff: Smith on Cont. p. 221; *Cole* v. *Gibson*, 1 Vesey 503; *Denny and Hook* v. *Vernon*, Fonblanque's Equity 212.

The judgment below is reversed, and cause remanded, with directions to award a new trial, and to sustain the demurrer to the defence made, and for further proceedings consistent with this opinion.

MARRIAGE BROKERAGE.—It is seldom that such cases as the principal one find their way into the courts. There is but one American case reported; and the English cases are all of an early date.

Story places the subject of Marriage Brokerage Contracts under the head of Constructive Fraud; and compares it with agreements made to give a reward for using influence and power over another person to induce him to make a will in favor of the obligor, and for his benefit; or secret contracts made with parents or guardians upon a treaty of marriage, to the effect that they are to receive a compensation, security or benefit for promoting the marriage, or giving their consent to it and the like: Story Eq. Jur., sects. 265, 266.

The civil law allowed match-makers (*proxenetae*) to ply their vocation, and receive a reward for their services to a limited extent: Cod. Lib. 5 tit. 1, l. 6. See *Crawford* v. *Russell*, 62 Barb. 92, 97.

One of the earliest cases upon the subject of the principal case was *Stribblehill* v. *Brett*, 2 Vern. 445, decided Nov. 13, 1702, in the House of Lords. Colonel Brett had procured a marriage between Mr. Thynn and Lady Ogle, and in consideration thereof received a lease of certain lands. The lease was set aside upon the ground that it was based upon an unjust consideration. The case is very short, and no opinion was given except a remark that, "if the lease was gained by fraud, or an unjust consideration, it is to be deemed void, and the estate discharged of it as if no such lease had been made." A better report of the case appears in Finch's Precedents, p. 165; s. c. Parl. Cases 57; 2 Eq. Abr. c. 1; 14 Viner Abr. 160. Another report of this case, under another name, says it was held that such contracts "are of dangerous consequence, and not to be allowed:" *Hall* v. *Keene*, 3 Levinz 411. In another report of this case it is said, "that marriages ought to be procured and promoted by the mediation of friends and relations, and not of hirelings:" Show. Cas. 78.

An earlier case than the one just cited was *Drury* v. *Hooke*, 1 Vern. 412; s. c. 2 Ch. Cas. 176; Eq. Cas. Abr. 89, pl. 2, which is reported as follows: "The bill was to be relieved against a marriage *brocage* bond; and it appearing that the marriage was brought about without the consent of the young woman's parents, who were then living, the Lord Chancellor, for that reason alone, decreed the bond to be delivered up, terming it a sort of kidnapping, and said there was a material difference where the parties were at their own disposal, and where their parents were living; though such a bond was in no case to be countenanced." A note to this case adds: "It appeared upon the pleadings in this case, that the defendant agreed to abate 40*l.* in every 1000*l.*, if the portion of the intended wife should fall short of the sum named, as her portion by defendant namely, 4000*l.*, the bond from the plaintiff being to secure 160*l.*" *Smith* v. *Bruning*, 2 Vern. 392,

is as follows: "The court not only decreed a marriage *brocage* bond to be delivered up, but a gratuity of *fifty* guineas actually paid to be refunded."

In many of the cases cited it will be observed that the court ordered the bond to be delivered up; but where the plaintiff alleged that he had given a note for such a contract, and asked for an injunction to restrain any assignment of it, and to order it delivered up, the court refused the latter request, but granted the former: *Smith* v. *Aykwell*, 3 Atkyn. 566.

Such bonds are set aside, "not for the party's sake, but for the benefit of the public:" *Debenham* v. *Ox*, 1 Ves. Sr. 276, 277; *Cale* v. *Gibson*, Id. 503; *Pitcairn* v. *Ogbourne*, 2 Id. 375; *Hylton* v. *Hylton*, Id. 547; *Booth* v. *Earl of Warrington*, 4 Bro. P. C. 163.

In an American case it was said: "Thus marriage brokerage bonds, which are not fraudulent on either party, are yet void, because they are a fraud on third persons and are a public mischief, as they have a tendency to cause matrimony to be contracted on mistaken principles, and without the advice of friends; and they are relieved against as a general mischief, for the sake of the public:" *Boynton* v. *Hubbard*, 7 Mass. 112, 118.

In an action it was alleged that the plaintiff and defendant entered into an agreement in writing, by which the former agreed that she would do all in her power to aid in a marriage between one R. and the defendant; in consideration whereof the defendant promised that in case she became the wife of R., and outlived him, she would pay the plaintiff, for her services in the matter, $2000 in cash. It was further alleged that R. was a widower, possessing great wealth, that the plaintiff performed the agreement on her part, and that R. and the defendant were lawfully married, and lived together happily for many years, when R. died, leaving the defendant $50,000. A demand of performance, and refusal by the defendant, were then alleged. Upon this complaint the plaintiff was nonsuited, on the ground that the agreement was a marriage brokerage contract, and therefore void as being against public policy. It was also held in this case that the agreement being void, the claim for advances of money and services performed under it must fall with the agreement itself: *Crawford* v. *Russell*, 62 Barb. 92.

Even a bond given after marriage in consideration of assistance rendered by the obligee in effecting the obligor's marriage has been held void: *Williamson* v. *Gihon*, 2 Sch. & L. 357.

ACCORD AND SATISFACTION.—Dr. Wharton defines an accord and satisfaction as "an agreement to accept in satisfaction of a debt something at the time received. (Citing Bac. Abr. *Accord;* Com. Dig. *Accord and Sat.;* *Kaye* v. *Waghorne*, 1 Taunt. 428.) The accord is the agreement for the reception of the thing in discharge of the debt; the satisfaction is the actual reception of the thing." This definition is supported by the following authorities, where the terms have been defined: *Pulliam* v. *Taylor*, 50 Miss. 257; *Bull* v. *Bull*, 43 Conn. 462; *Line* v. *Nelson*, 9 Vr. (N. J.) 362; *Preston* v. *Grant*, 34 Vt. 203; *Cumber* v. *Wane*, 1 Sm. L. Cas. 445.

All the authorities are in harmony that there must be an acceptance, and without that, the accord is no defence: *Flockton* v. *Hall*, 14 Q. B. 380; *Hall* v. *Flockton*, 16 Id. 1039.

To be a bar to a writ, the accord must be executed before the action is brought: *Woodruff* v. *Dobbins*, 7 Blackf. 582; *Frost* v. *Johnson*, 8 Ohio 393; *Ballard* v. *Noaks*, 2 Pike (Ark.) 45; *Sprunebergeer* v. *Dentler*, 4 Watts (Pa.) 126; *Simmons* v. *Hamilton*, 56 Cal. 493; *Keeler* v. *Neal*, 2 Watts (Pa.) 424; *Brooklyn Bank* v. *Graw*, 23 Wend.

342; *Anderson* v. *Turnpike Co.*, 16 Johns. 86; *Russell* v. *Lytle*, 6 Wend. 390; *Cooper* v. *Parker*, 15 C. B. 822; *Warren* v. *Skinner*, 20 Conn. 559; *Bayley* v. *Horman*, 3 Bing. (N. S.) 920; *Collingbourne* v. *Mantell*, 5 M. & W. 292; *Brown* v. *Perkins*, 1 Hare 564; *Smith* v. *Bartholomew*, 1 Met. 276; *Gabriel* v. *Dresser*, 15 C. B. 622.

If the accord was a satisfaction without its being executed, the plaintiff would be in an anomalous position; for he would be defeated in his suit, with no means to enforce the performance of satisfaction in those instances where something else than the payment of money was agreed to be made or done. In such a position, the plaintiff's only remedy would be an action for a breach of the contract.

Until satisfaction has taken place the accord is a *mere negotiation*. Therefore, until satisfaction is received, the creditor may withdraw his acceptance: *Allen* v. *Harris*, 1 Ld. Raym. 122; *Young* v. *Fugett*, 1 Lea (Tenn.) 447; *Massey* v. *Johnson*, 1 Exch. 256; *Noe* v. *Christie*, 51 N. Y. 270; *Spence* v. *Healey*, 8 Exch. 668; *Reeves* v. *Hearne*, 1 M. & W. 323; *White* v. *Gray*, 68 Me. 579; *Pope* v. *Tunstall*, 2 Pike (Ark.) 209; *Woodward* v. *Miles*, 24 N. H. 293; *Overton* v. *Conner*, 50 Texas 113; *Logan* v. *Austin*, 1 Stew. (Ala.) 476; *Hearn* v. *Kiehl*, 38 Pa. St. 149; *Hall* v. *Smith*, 10 Iowa 48; *Simmons* v. *Clark*, 56 Ill. 96; *Flack* v. *Garland*, 8 Md. 191. See *Ellis* v. *Bitzer*, 2 Ohio 91; *Cuxon* v. *Chadley*, 3 B. & C. 591; *Panzerbeiter* v. *Waydell*, 21 Hun 161; *Kromer* v. *Heim*, 75 N. Y. 574; *Costello* v. *Cady*, 102 Mass. 140; *Bragg* v. *Pierce*, 53 Me. 65.

A., the payee of certain mortgage notes made by B., sued B. for the amount due. B. alleged in defence an agreement with A., by which B. was to find a purchaser for the mortgaged realty, who was to pay the arrears of interest, refund certain expenses, and execute new notes to A., whereupon A. was to accept the purchaser as his debtor and discharge B. B. averred that he found such a purchaser but that A. refused to consummate the agreement. A. sold the realty at auction under the mortgage power, bought it in, and brought the suit in question to recover a balance due on the notes. It was held that the defence was bad as an accord and satisfaction, because it only showed a readiness on the part of B. to join A. in executing the accord, but showed no satisfaction nor execution of the accord: *Pettis* v. *Ray*, 12 R. I. 344.

C. purchased the defendant's millinery goods, and in part consideration thereof, agreed to pay the defendant's debt to the plaintiff. C. thereupon wrote the plaintiff that her husband *proposed* to give his note on six months for the debt, and the plaintiff replied *accepting the proposition*. The note was never given, but C. made remittances to the plaintiff from time to time, to apply on the debt. It was held that the negotiations were a mere accord, and that the defendant was not thereby discharged from the balance of the debt: *Rising* v. *Cummings*, 47 Vt. 345. See *Molyneaux* v. *Collier*, 2 Am. L. Reg. (O. S.) 379; *City of Memphis* v. *Brown*, 11 Am. L. Reg. (N. S.) 629.

That the plea must allege that the matter was accepted in satisfaction. See *Sinard* v. *Patterson*, 3 Blackf. 354; *Maze* v. *Miller*, 1 Wash. C. C. 328; *Morris Canal Co.* v. *Van Vorst*, 1 Zab. (N. J.) 101; Smith's L. Cas. 606 (7th Am. ed.).

W. W. THORNTON.

Crawfordsville, Ind.